IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 256 of 2004

in

COMPANY APPLICATIONNo 469 of 2003

with

COMPANY APPLICATION No 50 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESH GULABRAI DESAI

Versus

O.L. OF M/S. ARBUDA MILLS LTD.

Appearance:

1. COMPANY APPLICATION No. 256 of 2004
MR PRABHAKAR UPADYAY for Petitioner No. 1
OFFICIAL LIQUIDATOR for Respondent No. 1

MR PRANAV G DESAI for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3,5-7
MR RM DESAI for Respondent No. 4
SINGHI & CO for Respondent No. 8
MR DS VASAVADA for Respondent No. 9

2. COMPANY APPLICATION No. 50 of 2005

MR DS VASAVADA for Petitioner No. 1
OFFICIAL LIQUIDATOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 25/04/2005

ORAL JUDGEMENT

#. Company Application No.256/2004 is filed by one Suresh Gulabrai Desai, Ex Factory Manager of Arbuda Mill Company Ltd., (in liquidation) and Judges Summons was taken out seeking direction to the Official Liquidator not to hand over the possession of the Administrative building/ Time Keeper office, compound wall, records of the company, Dispensary building, coal ash etc. to the respondent No.2 i.e. Kalantry Consultants, as per the order dated 21.6.2004 by holding and declaring that the same was not part and parcel of the earlier sale proceedings. The applicant has also prayed for the eirection to the Official Liquidator to take necessary steps against the respondent No.2 from restraining them from entering into the premises of the mill company to carry out any kind of activity and to seal the premises of the mill company. The applicant has further prayed for the direction to the respondent No.2 to restore the original possession of the Administrative building/ Time Keeper office alongwith the fixtures, furnitures and all other valuable articles at the cost of respondent No.2 and further prayed for the imposition of necessary punishment / penalty to the respondent NO.2 for damaging the valuable properties of the mill company which was not sold to the respondent No.2. The applicant has also prayed for the direction to the respondent No.1 to put the respondent No.2 under the black list by holding and declaring the respondent No.2 as ineligible to attend or appear in any sale proceedings conducted by the respondent No.1 in future. The applicant has further prayed for the direction to hand over the possession to Central Investigation Bureau (CBI) for the purposes of investigation or any other investigating authority / agency which this Court deems fit in the interest of justice, to investigate into the matter relating to the irregularities / illegalities committed by the

responsible officers / individual or any other establishment in the sale proceeding of M/s. Arbuda Mill Company Ltd., (in liquidation).

#. The applicant has filed detailed affidavit in support of Judges Summons. Mr.Prabhakar Upadhyay learned advocate appearing for the applicant has submitted that this Court has passed an order on 18.12.2001 in OLR No.82/2001 whereby the offer of Vijay Traders was accepted and the purchaser Vijay Traders or their nominees were directed to remove the building structure and debris within the period of 12 months from the date of order, except time Keeper Office, Compound Walls and records of the Company. After the full payment was made the possession of the mill Company was handed over to nominee of M/s.Vijay Trader i.e. respondent No.2 with the condition that either the purchaser or their nominee would not remove or demolish the compound wall, Time Keeper Office or concerned record rooms of the mill company. The respondent No.2 was also directed not to dig out the open land, or to take out the cable wires of AEC, drainage line laid down by the Ahmedabad Municipal Corporation within the Compound of Mill Company, or cause any damage. Mr.Upadhyay further submitted that instead of implementing the direction, the respondent No.2 with the help of the labourers tried to take out the Cable Wires of the AEC, pipelines as well as the Coal ash though the same were not sold out to respondent No.2. A specific complaint to this effect was made by the Sale Committee Members on 27.2.2003 and despite this complaint no preventive measures were taken by the Official Liquidator. The President of Textile Labour Association therefore wrote letter dated 22.2.2003 to the AEC pointing out therein that the respondent No.2 had been taking out the cable wires of AEC though such materials were not sold to the respondent No.2. Mr.Upadhyay further submitted that another complaint was made by the security person to the Official Liquidator on 6.3.2003, wherein certain allegations have been made against the representative of Official Liquidator viz. Mr.Kansara. The Official Liquidator has not taken any action against the said Mr.Kansara. Mr.Upadhyay has further submitted that though the materials which were not sold to the respondent No.2 were taken out from the mill Company and detailed complaint in this regard was made on 12.3.2003. Mr.Upadhyay has further submitted that the Division Bench of this Court has passed an order on 17.2.2004 in OJ Appeal No.41/2003 that the directing the respondent No.2 not to remove the coal ash lying on the surface compound of premises of the Company and granting liberty to the respondent No.2 only to take possession of the coal ash

from the foundation of the building without damaging the surface of the premises. The Division Bench has also directed the respondent No.2 to undertake such exercise without causing any damage and to level the surface after the coal ash was taken out from the foundation.

#. Mr.Upadhyay has further submitted that the office of the Official Liquidator is also assisting the respondent No.2 and for that purpose he has relied on the order passed by this Court on 21.4.2004 in Company Application No.50/2003 filed by the Textile Labour Association wherein the Court has taken very serious view by observing that the Official Liquidator has misled the Court by representing that the representative of the Official Liquidator has taken out photographs. However, the said photographs were taken by the respondent No.2 and hence the respondent No.2 cannot be treated and considered as representative of the Official Liquidator.

#. Mr.Upadhyay has further submitted that the respondent No.2 has preferred Company Application No.469/2003 with Company Application No.7/2004 with a Company Application No.57/2004 seeking direction from this Court to the Official Liquidator to issue direction to the security staff as well as to the member of T.L.A. to allow the respondent No.2 to demolish the General Office building as well as the Administrative building of the Mill Company and to permit the respondent No.2 to take away the coal ash lying in the foundation of the building structure. He has further submitted that the respondent No.2 has taken an order from this court to the above effect without placing correct facts and the Official Liquidator has also not pointed out to the Court that the Time Keeper office, which is part and parcel of the Administrative building, was not sold to the respondent No.2. Mr.Upadhyay has further submitted that it is very unfortunate that though the Official Liquidator is dealing with the public property mortgaged with the Nationalised Bank, he has not filed any report before this Court pointing out irregularity committed by the respondent No.2. He has further submitted that the respondent No.2 has acted contrary to the several orders passed by this Court. He has also submitted that the respondent No.2 has misled this Court by not submitting the true facts. He has further submitted that the building of Dispensary was shown as Time Keeper office and the representative of the Official Liquidator viz. Mr.Kansara has entered into the premises without any authority or the order of this Court or any letter of the Official Liquidator and he has shifted the whole record of the Mill Company from the Administrative building /

Time Keeper Office to the Dispensary building with the malafide and deliberate intention to help the respondent No.2. Mr.Upadhyay has further submitted that even representative of Bank and Financial Institution have also not acted in the interest of their institutions, as despite the service of notice they did not remain present and have not pointed out correct facts before the Court.

#. Inspite of repeated directions issued by this Court restraining the respondent No.2 from taking coal ash lying on the open surface of the Mill Company compound, the respondent No.2, with malafide and deliberate intention, with the help of the Official Liquidator, has dug out the open land and taken away the coal ash from time to time. It is further submitted that though the respondent No.2 was well aware about the facts that coal ash was not part and parcel of the sale proceedings and that proper procedure has not been followed for removal of the coal ash and that the same has not been purchased by the respondent No.2, an application was moved before this Court seeking permission from this Court to take out coal ash from the Mill compound. Mr.Upadhyay has therefore submitted that the detailed investigation and inquiry is required to be made in the matter against the respondent No.2 as well as all other responsible persons. He has further submitted that the applicant is ready and willing to establish before any investigating agency including before this Court that the Time Keeper Office itself is the Administrative building and same was fully furnished with all necessary equipment and valuable articles. He has further submitted that the applicant has no personal interest in the property of the Mill Company. He has approached this Court only with a view to see that the property of the Mill Company may not be illegally taken away because of which the workers and secured creditors should suffer.

#. The Official Liquidator has filed his report on 16.8.2004 wherein he has submitted that he has received the letter dated 20.12.2002 from some of the members of the T.L.A. stating about the removal of coal ash and another letter dated 23.12.2002 from T.L.A. and another letter dated 20.12.2002 from the security staff and thereafter he had immediately directed the Watch and Ward Staff not to allow removal of coal ash from the Mill premises vide his letter dated 23.12.2002. He has further submitted that he has also deputed his representative on site on 30.12.2002 and stopped the removal of coal ash. He has further submitted that on 8.1.2003 he has directed the respondent No.2 to hand over

the possession of which the respondent No.2 has replied that they have moved this Court for extension of time. He has further submitted that on 31.1.2003 he wrote a letter to the Security Supervisor directing him to allow purchaser to only remove building materials and not the coal ash. He has further submitted that pursuant to the letter received from T.L.A. dated 22.2.2003 about the removal of cables etc, he immediately wrote a letter on 27.3.2003 directing the respondent No.2 not to remove any pipelines, cables, etc. On the basis of this action, he has submitted that he has acted and attended to the complaints made before him from time to time. He has further submitted that the T.L.A. being a recognised union representing sale committee certain individual members also wrote various letters of different nature and it is difficult to attend all these letters immediately. He has, therefore, denied that he has not taken any preventive action against the complaint lodged by all these persons. He has further submitted that he has complied with the directions issued by this Court from time to time and it is not true that the representative of his office has visited the factory without any authority. He has submitted that he has issued a letter dated 2.4.2004 to all secured creditors, T.L.A. and respondent No.2 stating that the shifting of record would be taken place on 6.4.2004 and the minutes to that effect was also drawn. He has further submitted that the applicants have made allegation with some ulterior motive and there is no substance in any of these allegations. He has further submitted that under an order of this Court passed on 21.6.2004 the possession of the Administrative building was handed over to the respondent No.2 and thereafter the respondent No.2 has removed all the items except walls and building structure in the Administrative building, such as fixtures, furnitures etc, building equipment, window, doors and even roof of the building.

#. The applicant has filed further affidavit on 12.9.2004 and 5.12.2004, wherein he has reiterated all allegations made in the application and submitted that despite the order passed by this Court and directions issued by this Court the employees / nominee / agents of respondent No.2 working in the Mill Company, they were entering into the premises and the respondent No.1 has not taken any action. He has further submitted that the appropriate actions are required to be taken against the respondent Nos.1 and 2 for their wilful and deliberate non-compliance of the order passed by this Court. He has further submitted that though the material lying in the Time Keeper office were removed, no payment whatsoever

was made in respect thereof.

#. The respondent No.2 has filed his affidavit on 28.12.2004 wherein preliminary objection was raised regarding maintainability of the application, as the applicant is not the member of the Union and has no locus standi to move this Court by way of present application. It is further stated that the workmen of the Mill Company are represented by the T.L.A. and therefore the applicant has no right to file the present application before this Court in his individual capacity. He has further submitted that the respondent No.2 has not taken out the cables/ wire of AEC / pipelines with the help of the labourer as alleged by the applicant. It is further stated that AEC had already taken out their cables, wire from the Mill Compound. It is further stated that coal ash has been taken out by the respondent as per the order passed by this Court and the respondent No.2 has also carried out the work as per the order passed by this Court and handed over the possession to the Official Liquidator. It is further stated that the allegation made against the respondent No.2 are devoid of any substance and hence this Court should not take any congnizance of such baseless allegation. It is further stated that the respondent No.2 has not caused any damage to the Compound wall or has not taken out any coal ash which was lying on the surface. It is therefore stated that the complaint deserves to be straight way rejected.

#. Heard Mr.Upadhyay learned advocate appearing for the applicant, Mr.D.S.Vasavada learned advocate appearing for the T.L.A., the Official Liquidator and Mr.Pranav G. Desai learned advocate appearing for the respondent No.2 - the real contesting party. Before Court decide the controversy raised in the application, it is necessary to take note of the fact that earlier one Company Application No.260/2004 was filed by one Devjibhai Nagjibhai Patel and others, who were actually Time Keepers at the time when the company went in liquidation. They have raised grievance in the said application against the order passed by this Court in Company Application No.59/2003 as well as No.469/2003 on 21.6.2004. It is the say of the said applicant in that application that while obtaining orders by the respective applicants in those two applications, the correct facts were not placed by them and earlier orders passed by this Court were not brought to the notice of this Court, hence the applicants were aggrieved by the said order. The prayers made in the said application are exactly similar to the one which are made in the present application. While disposing of the said application this Court has

observed that if the applicants have any grievance against the order passed by this Court, the remedy of filing an appeal is available to them. By seeking appropriate leave they can certainly challenge the said order before the Appellate Court. Since the applicants were not parties in the original application and the prayer made in that application tantamount to review and modification of the order which is not permissible, the Court has not entertained the said application. The Court however kept the issue open for the applicant to take appropriate proceedings ventilating their grievance before the Appellate Court. Mr.Desai further submitted that since one such similar application has already been rejected by this Court, it is not open for the present applicant to prefer the fresh application and pray for the same reliefs. He therefore submitted that the present applicant was not party in the earlier proceedings and hence following the view taken by this Court in the order passed in Company Application No.260/2004, present application also deserves to be rejected on that very ground.

##. The Court has considered the several contentions raised by the parties and has also gone through the earlier orders as well as the affidavits, reply to the report filed in the present proceeding. Apart from legal issues raised against maintainability of the present applicant and also the principle of resjudicata being involved by the respondent No.2, even on merits the application does not call for any interference by this Court. The allegations made are too vague and are not free from personal animosity. Allegations are made not only against the respondent No.2 but they are also made against the Official Liquidator as well as the members of the T.L.A. The Court is not much concerned about the correctness of the various allegations made in the present application. There may be some lacking on the part of the Official Liquidator and timely action might not have been taken by him but facts emerged on record does not indicate any malafide intention or that he has favoured the respondent No.2. The respondent No.2 has approached this Court from time to time and sought the direction and as per the direction he has acted. The possession of the Administrative office was given only after the order passed by this Court and the records were shifted. The Time Keeper office is meant only for keeping record. Once the record is shifted there is no use of keeping that building intact. Even otherwise there is no dispute about the fact that the entire building and super structure was sold to the respondent No.2, while confirming the sale, no description of Time

Keeper office was given. The Time Keeper office was not to be demolished, as compound to be demolished, as except this Time Keeper office, entire building was sold to the respondent No.2. Simply because Time Keeper office was not sold, it cannot be said that the Administrative building was not sold to the respondent No.2.

##. With regard to allegation of taking out coal ash from the foundation, there is some force in the argument of the respondent No.2 as the Division Bench has permitted the respondent No.2 to take out the coal ash from the foundation. The allegation regarding taking out electricity cables, pipelines etc. has also no force as the correspondence has come on record whereby the electricity company has taken out the cables from the Mill premises.

##. In the above view of the matter, none of the allegations made in the present application are based on any unimpeachable or convincing evidence and hence the application does not call for any interferance by this Court.

##. Since the Court has rejected Company Application No.256/2004 on the ground that none of the allegations made against the respondent No.2 in the said application are found to be sustainable, the prayer made by the Textile Labour Association in this application seeking direction to M/s.Kalantri Textile Consultants to pay an amount of Rs.10 lacs to the Official Liquidator as a cost of levelling cannot be granted. It is more so when it has been admitted by the respondent No.7 that he is prepared to level the land of Arbuda Mills Ltd., (in liquidation). Since the respondent No.7 has not entered into the premises subsequent to handing over possession back to Official Liquidator, there is no question of granting any relief restraining them from entering into the premises. As far as relief regarding payment of rent of Rs.1 lac for retaining the possession of the property beyond the time granted by this Court is concerned, it has come on record that the possession has been handed over by the respondent No.2 within time granted by this Court and hence there is no question of charging any rent for the alleged retention of the premises by the respondent No.2.

##. In the above view of the matter both these applications are accordingly rejected without any order as to costs.

(K. A. PUJ, J.)

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